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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

NELSON ISAIAS GUEVARA,

Defendant and Appellant.

B206150

(Los Angeles County  
Super. Ct. No. BA307690)

APPEAL from a judgment and order of the Superior Court of Los Angeles County, Frederick N. Wapner, Judge. Affirmed.

Charles B. Holzhauer, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Nelson Isaias Guevara appeals from the postjudgment order revoking probation and judgment executing a previously stayed five-year state prison sentence. We affirm.

On December 14, 2000, Guevara entered a negotiated plea of no contest to selling cocaine base (Health & Saf. Code, § 11352, subd. (a)) and was placed on three years of formal probation on condition he serve 365 days in county jail.

In August 2002, Guevara punched his live-in girlfriend in the nose and was arrested for committing corporal injury on a cohabitant. His probation was summarily revoked.

On September 25, 2002, Guevara appeared in court with counsel, waived his right to a hearing and admitted he had violated probation. The court sentenced Guevara to the upper term of five years in state prison, suspended imposition of sentence, and revoked and reinstated three years of formal probation, subject to modified conditions, including that Guevara serve 365 days in county jail with no credit for time served.

Guevara failed to report to his probation officer after he was deported to El Salvador by the (former) United States Immigration Services in May 2003. When Guevara failed to appear in court on September 5, 2003, his probation was summarily revoked, and a bench warrant was issued.

On May 27, 2007, Guevara was arrested for driving under the influence of alcohol, and on the outstanding bench warrant. At the time, Guevara had another case pending for driving under the influence.

A contested probation violation hearing was held on November 5, 2007, and December 14, 2007. At the hearing, California Highway Patrol Officer Jorge Mellos testified he arrested Guevara at a sobriety checkpoint after noting Guevara's red and watery eyes, slurred speech, strong odor of alcohol, inability to follow simple instructions and other objective signs of intoxication. Guevara stumbled when he got out of his car and could not keep his balance. Mellos testified Guevara became aggressive and refused to undergo field sobriety tests and a breathalyzer test.

Guevara testified in his defense he was sober when Mellos stopped him at the checkpoint, pulled him from his car, bent his arm behind his back and took him to a trailer for a breathalyzer test. Guevara denied that he had feigned taking the test or that Mellos had attempted to conduct field sobriety tests.

At the conclusion of the hearing, the trial court found Guevara in violation of probation, revoked and declined to reinstate probation, but agreed to continue the sentencing hearing to allow defense counsel to be heard on the question of whether Guevara had previously waived his presentence custody credit for all purposes.

When the sentencing hearing resumed, the trial court ordered executed the previously imposed and stayed five-year state prison sentence and concluded Guevara was entitled to presentence custody credit in this case. Guevara was awarded 719 days of presentence credit (236 actual days and 118 days of conduct credit). The trial court also imposed a \$50 laboratory fee (Health & Saf. Code, § 11372.5, subd. (a)) and a \$200 restitution fine (Pen. Code, § 1202.4, subd. (b)). A parole revocation fine was imposed and suspended pursuant to Penal Code section 1202.45.

Guevara timely filed a notice of appeal challenging the revocation of his probation and execution of his previously suspended sentence. We appointed counsel to represent Guevara on appeal.

After examination of the record counsel filed an “Opening Brief” in which no issues were raised. On November 10, 2008, we advised Guevara he had 30 days within which to personally submit any contentions or issues he wished us to consider. No response has been received to date.

We have examined the entire record and are satisfied Guevara’s attorney has fully complied with the responsibilities of counsel and no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

The postjudgment order revoking probation and judgment are affirmed.

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**WOODS, J.**

**We concur:**

**PERLUSS, P. J.**

**JACKSON, J.**